IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

:: O R D E R ::

Onkar Ram Vs. State of Rajasthan & Ors.

S.B.Civil Writ Petition No.2721/1996
under Article 226 and 227 of the Constitution of India.

Date of Order :: 07.04.2005

HON'BLE MR. JUSTICE GOVIND MATHUR

Mr. R.K. Singhal, for the petitioner.
Mr. Shyam Ladhrecha, for respondent No.1
Ms. Kusum Rao, for respondents No.2 and 3.
Mr. Kulwant Singh, for respondents No.4 to 7.

Heard learned counsel for the parties.

This writ petition is directed against resolution No.8 resolved by the Panchayat Samiti, Hanumangarh in its general meeting held on 29.6.1996. The Panchayat Samiti, Hanumangarh by the aforesaid resolution resolved to allot certain piece of land to respondents No.4 to 7 in Khasra No.183 and 185 in village Jorkian. The resolution No.8 referred above was taken in pursuance of an order dated 6.9.1994 passed by the Additional Secretary (Enquiries)/ Department of Rural Development cum Panchayat Raj, Government of Rajasthan, Jaipur.

The facts in brief necessary for adjudication of present writ petition are that the Gram Panchayat, Jorkian exercising powers under Rule 267 of Rajasthan Panchayat General Rules, 1961 by resolution dated 29.9.1990 allotted plot No.185/5, 185/6, 185/4 and 185/2 to the respondents Jagdish S/o Himmata Ram, Sita Ram s/o Om Prakash, Lekh Ram S/o Himmta Ram and Nirana Ram S/o Himmta Ram respectively. A challenge was given by the petitioner to aforesaid allotment made by Gram Panchayat by way of filing an appeal before Panchayat Samiti, Hanumangarh. Panchayat Samiti, Hanumangarh by its order dated 27.5.1991 accepted the appeal and set aside the allotment made in favour of the respondents named above.

The respondents No.4 to 7 being dissatisfied by the order passed by the Panchayat Samiti, Hanumangarh dated 27.5.1991, preferred a revision petition under Rule 272 of Rajasthan Panchayat Rules, 1961 before the Collector, Hanumangarh. The Collector, Hanumangarh by its order dated 1.9.1994 dismissed the revision petition and affirmed the order dated 27.5.1991 passed by the Panchayat Samiti, Hanumangarh.

It appears that Shri Sultana Ram, former Sarpanch of Gram Panchayat, Jorkian was subjected to disciplinary enquiry under Rule 21 of the Rules of 1961. The Director cum Special Secretary to the

Government of Rajasthan by the order dated 6.9.1994 exonerated former Sarpanch Shri Sultana Ram from the allegations levelled against him with regard to irregularities in allotment of land in Khasra No.183 and 185 in village, Jorkian. The Director cum Special Secretary, Department of Rural Development cum Panchayat Raj, Government of Rajasthan by the order dated 6.9.1994 while exonerating former Sarpanch Shri Sultana Ram also made an order to allot the land in Khasra No.183 and 185 whereon the allottees belonging to Harijan community were having possession. The respondents No.4 to 7 though, not party to the proceedings before the State Government, immediately obtained a copy of the order passed by the State Government and filed a review petition before the Collector, Hanumangarh on 7.9.1994. The review petition filed on 7.9.1994 came to be rejected by the order of Collector, Hanumangarh on 8.9.1994.

After rejection of the review petition, a civil suit was filed by the respondents No.4 to 7 before the Court of Additional Civil Judge (J.D.), Hanumangarh seeking a permanent injunction for not to dispossess them from the land in question. In the said suit, the petitioner was not impleaded as party defendant, therefore, an application was preferred by the present petitioner in the suit to become party to the proceedings. An application was also filed by the Vikas Adhikari, Panchayat Samiti, Hanumangarh under

Order 7 Rule 11 CPC for rejection of the suit itself on account of non giving of notice as required under Section 109 of CPC. The suit preferred by the respondents No.4 to 7 was dismissed by the trial Court as withdrawn.

After withdrawal of the suit, the Panchayat Samiti, Hanumangarh by the resolution No.8 dated 29.6.1996 resolved to allot plots situated in Khasra No.183 and 185 to the allottees those are respondents No.4 to 7 in pursuance of the order passed by the Director cum Special Secretary to the Government of Rajasthan, Department of Rural Development cum Panchayat Raj, Jaipur on 6.9.1994. Hence, this writ petition is preferred by the petitioner challenging the resolution referred above.

I have heard learned counsel for the parties.

The land in dispute was allotted to respondents No.4 to 7 by the Gram Panchayat, Jorkian exercising powers under Rule 267 of the Rules of 1961 on 29.9.1990. The decision of Gram Panchayat, Jorkian was challenged by the petitioner by way of filing an appeal before the Panchayat Samiti, Hanumangarh. The Panchayat Samiti, Hanumangarh by its order dated 27.5.1991 accepted the appeal and set aside the decision of the Gram Panchayat dated 29.9.1990. The order passed by the Panchayat Samiti, Hanumangarh

exercising its appellate jurisdiction was affirmed by the Collector, Hanumangarh exercising powers under Rule 272 of the Rules of 1961.

In view of it, the allotment made in favour of respondents No.4 to 7 stood cancelled being in violation of the provisions of the Rules of 1961. It is surprising enough that the Director cum Special Secretary to the Government of Rajasthan, Department of Rural Development cum Panchayat Raj, Jaipur while examining conduct of the former Sarpanch of Gram Panchayat, Jorkian ordered for regularisation of possession of the respondents No.4 to 7 in the land bearing Khasra No.183 to 185. The State Government was having no such jurisdiction while adjudicating conduct of former Sarpanch. Under Rule 21 of Rules of 1961, a final enquiry is required to be conducted against delinquent Sarpanch and the State Government is competent to pass order after considering the findings of the inquiring authorities by affording a reasonable opportunity of hearing to the person charged. The State Government is required to confine itself while passing an order under Rule 22 of Rules of 1961 to the charges adjudicated by the Inquiry Officer against the persons charged. Under Rule 22 of the Rules of 1961, the State Government is having no authority to give directions to Panchayat Samiti to regularise possession over the land by any person. If any such order is passed by State Government under

Rule 22 of the Rules of 1961, then the same shall be nothing but an order without jurisdiction.

In the present case, the State Government while passing an order under Rule 22 of the Rules of 1961 exceeded the jurisdiction vested with it while directing the Panchayat Samiti, Hanumangarh to regularise the possession of the persons to whom land was allotted in Khasra No.183 and 185. The Panchayat Samiti, Hanumangarh also without application of mind just acted upon the order dated 6.9.1994 and resolved to regularise possession of respondents No.4 to 7 on the plots situated in Khasra No.183 and 185. As I have already held the directions given by the State Government under Rule 22 of the Rules of 1961 to the extent of regularisation of possession beyond the jurisdiction vested with the Government, therefore, the consequential resolution of the Panchayat Samiti, Hanumangarh dated 29.6.1996 is also nonest in the eye of law.

In view of whatever discussed above, this writ petition is allowed. The order passed by the State Government dated 6.9.1994 (Annexure-2) is quashed to the extent, it orders for regularisation of possession of respondents No.4 to 7 upon the land bearing Khasra No.183 and 185. The resolution No.8 dated 29.6.1996 taken by the Panchayat Samiti,

Hanumangarh is also hereby declared void and, therefore, the same is quashed.

No order as to costs.

[Govind Mathur],J.

Praveen